
IN THE
COURT OF APPEAL
OF THE STATE OF CALIFORNIA
Second Appellate District
Division Three
Civ. No. B 005912
(Super. Ct. No. C420153)

Church of Scientology of California,
Plaintiff-Appellant,
and
Mary Sue Hubbard,
Intervenor-Plaintiff-Appellant,
--against--
Gerald Armstrong,
Defendant-Respondent.

On Appeal From Superior Court of the State of California
County of Los Angeles
Judge Paul G. Breckenridge, Jr.

RESPONDENT'S APPENDIX IN LIEU OF
CLERK'S TRANSCRIPT

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FILED

DEC 23 1982

John J. Peterson County Clerk
John J. Peterson
BY JOHN SWEET, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

12	CHURCH OF SCIENTOLOGY OF	)	CASE NO. C 420 153
13	CALIFORNIA, A California)	
	corporation	)	ORDER
14	Plaintiff,)	
15	v.)	
16	GERALD ARMSTRONG, DOES 1)	
17	THROUGH 10, inclusive,)	
18	Defendants.)	
19	GERALD ARMSTRONG,)	
20	Cross-Complainant,)	
21	v.)	
22	CHURCH OF SCIENTOLOGY OF)	
23	CALIFORNIA, et al.,)	
24	Cross-Defendants.)	

A Motion for Clarification of Preliminary Injunction
and for Other Relief submitted by Plaintiff Church of
Scientology of California came on regularly for hearing

1 on December 8, 1982 before the Honorable John L. Cole.
 2 Plaintiff Church appeared by counsel Howard J. Stechel.
 3 Defendant Gerald Armstrong appeared by counsel Bruce M. Bunch.
 4 Intervenor Mary Sue Hubbard appeared by Michael S. Magnuson.

5 Based upon the papers submitted by the parties and
 6 oral argument at the hearing,

7
 8 NOW, THEREFORE, IT IS ORDERED that:

9 1. Counsel for the parties in this case shall be
 10 entitled to inspect the material under the protective custody
 11 of this Court solely for use in this case. Counsel shall not
 12 disseminate information about these documents or their contents
 13 except in papers filed in proceedings in this action. All such
 14 papers shall be filed under seal.

15 2. Should a party in another lawsuit seek discovery
 16 of these documents, the following procedures shall be followed:

17 (a) ^{appear (by virtue of the order)} The party shall ~~file a motion to intervene~~
 18 *solely for the purpose of files* in this action ~~and~~ a motion to initiate discovery of the
 19 documents under seal. The motion shall set forth, as in a
 20 request for production of documents, a description of the
 21 documents sought to be discovered.

22 (b) The moving party shall have no right to
 23 inspect the sealed documents. Rather, upon an order of this
 24 Court, a Special Master shall be appointed to review the
 25 documents and to identify all documents that fall within the
 26 moving parties' requests. The Special Master then shall notify
 27 all parties to this action of the documents that have been
 28 identified as being relevant to the discovery request.

1 (c) The parties to this action, including ~~all~~ *interveners*
 2 *interveners*, shall file formal objections to the production of
 3 any of the identified documents within fourteen (14) days of
 4 the mailing of the notice by the Special Master. If there are
 5 no objections to a document, it shall be made available to the
 6 moving party.

7 (d) If the moving party desires production of
 8 documents to which there has been an objection, the ^{moving} party shall
 9 file a motion to compel discovery to be heard by the Special
 10 Master. All parties who filed objections to the documents
 11 being sought shall be entitled to file papers in opposition to
 12 the motion. The motion to compel shall be considered a
 13 proceeding in this action.

14 (e) The costs of the Special Master shall be
 15 paid as follows: (1) the cost of reviewing the documents shall
 16 be paid by the moving party; (2) the cost of the hearing on the
 17 motion to compel shall be paid by the party or parties who do
 18 not prevail; and (3) should a party prevail on some issues and
 19 not on other issues, the cost shall be apportioned equitably
 20 among the parties by the Special Master.

21 DATED: Dec 23, 1912

22 *(3) Any party may move the court to make*
 23 *such order as may be just in the circumstances*
 24 *of such a motion, and the court may make such*
 25 *order as it may think fit.*
 26 JOHN L. COLE
 27
 28

Judge of the Superior Court

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6
7
8 Attorneys for Defendant, GERALD ARMSTRONG

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11	CHURCH OF SCIENTOLOGY OF CALIFORNIA,	)	CASE NUMBER: C 42 01 53
12)	
13	Plaintiff,	)	NOTICE OF MOTION FOR LEAVE TO
14	vs.	)	AMEND ANSWERS; DECLARATION OF
15	GERALD ARMSTRONG, DOES 1 through 10, inclusive,	)	JULIA DRAGOJEVIC; MEMORANDUM OF
16	Defendants.	)	POINTS AND AUTHORITIES; FIRST
17	MARY SUE HUBBARD,	)	AMENDED ANSWERS OF DEFENDANT
18	Intervenor.	)	[Proposed]
19	_____)	

20 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE that on _____,
22 1984, at _____ a.m., or as soon thereafter as counsel
23 may be heard in the Court to which this matter will be
24 assigned for trial, the Motion of defendant, GERALD
25 ARMSTRONG, for Leave to Amend his Answers to the Complaint
26 and Complaint in Intervention will be heard. Said Motion is
27 ///
28 ///


1 made upon the ground that the ends of justice will be fur-
2 thered by allowing the proposed amendment to the answers of
3 defendant, GERALD ARMSTRONG.

4 This Motion is based upon the instant notice, the
5 attached Declaration of Julia Dragojevic, the attached
6 Memorandum of Points and Authorities, as well as upon such
7 other and further material as may be introduced at the
8 hearing on this Motion.

9 DATED: April 2, 1984

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CONTOS & BUNCH

By: 

JULIA DRAGOJEVIC
Attorneys for Defendant,
GERALD ARMSTRONG

DECLARATION OF JULIA DRAGOJEVIC

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2
3 I, JULIA DRAGOJEVIC, declare:

4 1. That I am an attorney at law duly licensed to
5 practice before the Courts of the State of California, and am
6 an associate in the law firm of CONTOS & BUNCH, attorneys of
7 record for defendant, GERALD ARMSTRONG.

8 2. By the Motion to File Amended Answers to the
9 Complaint and Complaint in Intervention, defendant seeks to
10 add only two affirmative defenses--one for unclean hands and
11 another for spoliation. Both the Complaint and the Complaint
12 in Intervention seek equitable relief in the form of injunc-
13 tion and declaratory relief. The original answer filed by
14 defendant contained a First Affirmative Defense for unclean
15 hands. Because said affirmative defense contained a good
16 deal of factual information which the Court found to be
17 extraneous, the Court granted plaintiff's Motion to Strike
18 said defense on November 9, 1982. (A copy of the Court's
19 Minute Order of November 9, 1982, is attached hereto as
20 Exhibit "A".)

21 3. At the time of the preparation of the original
22 Answer to the Complaint, the case was obviously in its
23 beginning stages and declarant did not have specific knowl-
24 edge as to what facts could be asserted as an affirmative
25 defense for unclean hands.

26 4. On December 15, 1982, defendant filed a Motion
27 for Leave to File an Amended Answer to the Complaint, to
28 again attempt to assert a First Affirmative Defense for

1 unclean hands. The Motion was heard on January 4, 1983, and
2 was denied because the First Amended Answer did not contain
3 any facts supporting an affirmative defense of unclean hands.
4 Declarant believed that because the Court had first stricken
5 the affirmative defense based upon extraneous and irrelevant
6 factual material, that a defense simply asserting unclean
7 hands would be sufficient.

8 5. The Court advised declarant that the affirma-
9 tive defense must allege facts connecting the allegation of
10 unclean hands to the Complaint. At the time, declarant
11 believed that through discovery facts would come to light
12 which could be used, at a later time, to reassert a defense
13 of unclean hands.

14 6. The Complaint in this action was filed August
15 2, 1982. Because it seeks equitable relief in the form of
16 injunction and declaratory relief, plaintiff received a trial
17 priority, by having the matter set for trial within one year
18 and eight months since the filing of the Complaint. Through
19 the discovery that has gone forward in the case, declarant
20 has gathered facts which would now be sufficient to support
21 an affirmative defense of unclean hands. (A copy of the
22 proposed First Amended Answers to the Complaint and Complaint
23 in Intervention are attached).

24 7. Thus, on March 16, 1984, defendant sought an
25 order shortening time to allow a Motion for Leave to File
26 Amended Answers to be heard before the first trial date of
27 March 22, 1984. The order shortening time was not granted in

28 ///

1 that the Commissioner who heard the matter did not find good
2 cause for shortening time.

3 8. The affirmative defenses set forth in answers
4 to both the Complaint and Complaint in Intervention are
5 identical in that the same issues and requests for relief are
6 contained in both Complaints.

7 Neither plaintiff nor intervenor will be prejudiced
8 by the amendment of the defendant's Answers in that defendant
9 has at all times asserted in documents filed with the Court
10 that plaintiff and intervenor have unclean hands. In that
11 regard, the amendment will require no additional discovery by
12 either side.

13 9. With respect to the affirmative defense to
14 assert spoliation, the recent case of Smith vs. Superior
15 Court, 84 Daily Journal D.A.R. 469 (January 31, 1984) has
16 recognized the civil tort of spoliation or destruction of
17 evidence. The Smith Court has stated (as more fully set
18 forth in the Points and Authorities attached hereto), that
19 public policy dictates that a party is entitled to legal
20 prosecution against spoliation of evidence.

21 10. Defendant has at all times asserted that he
22 saved the documents under seal in this case from destruction,
23 and that should the documents be returned to plaintiff and
24 intervenor, they would either be destroyed or "lost". The
25 preliminary injunction in effect in this case provides for
26 discovery of the subject materials because they are relevant
27 to other Scientology litigation, as well as to defendant
28 Armstrong's severed Cross-Complaint in this case.

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11. Defendant was unable to assert the defense of spoliation prior to this time in that the case of Smith v. Superior Court was only recently decided.

Executed this 2d day of April, 1984, at Woodland Hills, California.

I declare under penalty of perjury that the foregoing is true and correct.



JULIA DRAGOJEVIC

MEMORANDUM OF POINTS AND AUTHORITIESI. INTRODUCTION

1
2
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4
5 Plaintiff, Church of Scientology of California, and
6 intervenor, Mary Sue Hubbard, seek injunctive relief in this
7 action. They are asking this Court to order defendant,
8 Gerald Armstrong, to turn over all originals and copies of
9 documents pertaining to L. Ron Hubbard, which they claim he
10 took from the Hubbard archives. In addition to defendant
11 Armstrong's claim that plaintiff's and intervenor's rights to
12 these documents are no greater than his, defendant Armstrong
13 also submits that plaintiff and intervenor are not entitled
14 to equitable relief because of their previous misconduct
15 concerning these documents. In short, plaintiff's and
16 intervenor's hands are unclean.

17 In order to understand the true significance of the
18 documents which are the center of this dispute, and the
19 misconduct which causes plaintiff and intervenor to have
20 unclean hands, the Court must have an understanding of the
21 representations plaintiff and intervenor have previously and
22 extensively made about L. Ron Hubbard, the purported founder
23 of the Church of Scientology. In order to make Hubbard
24 appear to be qualified to write on the many areas he does,
25 plaintiff and intervenor have made numerous misrepresenta-
26 tions to the public about Mr. Hubbard's past. These include
27 that Hubbard was raised on a cattle ranch in Montana, that he
28 travelled extensively through Europe and Asia, that he

1 graduated from George Washington University and attended the
2 graduate school of Princeton University, that he worked
3 extensively in Hollywood and the movies in the 1930's, that
4 he had a distinguished Naval record during World War II, that
5 he was a nuclear physicist, and that he was a Hollywood movie
6 writer and director in 1946. Numerous other representations
7 about Hubbard's background have also been made by plaintiff
8 and intervenor, and these representations were extensively
9 publicized in order to convince people to take Scientology
10 courses and purchase Scientology materials.

11 In the last 20 years, as the Church of Scientology
12 has become increasingly involved in civil and criminal
13 litigation across the country, and indeed, the Northern
14 Hemisphere, it became increasingly important to plaintiff to
15 keep L. Ron Hubbard's reputation from being besmirched.
16 Since 1966, therefore, plaintiff and intervenor have con-
17 stantly claimed that Hubbard no longer has anything to do
18 with the day-to-day operations of the Church. In fact, since
19 February 1980, plaintiff and intervenor have represented in
20 numerous civil cases that they are not in communication with
21 Hubbard and do not know where he can be found. Plaintiff and
22 intervenor have made the same claims in this suit. Plaintiff
23 and intervenor have also made numerous representations in
24 litigation concerning plaintiff's tax status and financial
25 structure, that Hubbard does not control plaintiff or any
26 Church of Scientology entities, and that no income or revenue
27 which plaintiff receives inures to Hubbard's benefit. This
28 representation has also been made in numerous cases.

1 The documents which are under seal in this Court
2 prove that these representations are false, and that plain-
3 tiff and intervenor know they are false. Essentially, they
4 conclusively establish that L. Ron Hubbard is a fraud; that
5 he does not have any of the qualifications plaintiff and
6 intervenor have claimed he has; that his personal life and
7 practices completely contradict the way he is represented in
8 Church of Scientology writings; that many of the promises and
9 claims made in Scientology materials are false; that L. Ron
10 Hubbard, contrary to numerous representations of plaintiff
11 and intervenor, has since 1966, controlled the Church of
12 Scientology and other Scientology entities; that, contrary to
13 representations of plaintiff and intervenor, until 1981
14 intervenor acted as his agent in order to control the Church
15 of Scientology; that a conspiracy exists to hide the truth
16 about Hubbard's ownership and control of the Church of
17 Scientology; that there is no corporate integrity to any of
18 the Scientology organizations; and that there is a conspiracy
19 to attack and destroy individuals who seek to reveal the
20 truth about Hubbard's past and his control of Scientology.

21 Thus, the plaintiff and the intervenor come into
22 this Courtroom as perpetrators of a massive fraud upon the
23 faithful followers of Scientology, the citizens of Cali-
24 fornia, the citizens of the United States, the courts of
25 California, and the federal courts of the United States.
26 Further, as the evidence of defendant Armstrong will demon-
27 strate, plaintiff and intervenor are engaged in an extensive
28 conspiracy to conceal and destroy evidence which will prove

1 that the representations they make about L. Ron Hubbard are
2 fraudulent. In fact, the documents which are at the core of
3 this case only came to light during a massive "shredding
4 party", which was undertaken to destroy evidence of Hubbard's
5 whereabouts and his control and involvement with the Church
6 of Scientology.

7 Perhaps the culmination of the plaintiff's and
8 intervenor's fraudulent efforts was to be the "authorized"
9 biography of L. Ron Hubbard. Intended to be written by a
10 non-Scientologist, Omar Garrison, intervenor and Mr. Hubbard
11 would nonetheless have final say over the contents of the
12 biography, and it would be used to conclusively memorialize
13 their fraudulent version of the life of L. Ron Hubbard. Two
14 unwitting, and ultimately unwilling, participants in this
15 effort were Omar Garrison, who had contracted with a puppet
16 organization of the Church of Scientology to write the
17 biography, and defendant, Gerald Armstrong, who was Mr.
18 Garrison's research assistant and the Hubbard archivist. Mr.
19 Garrison and defendant Armstrong were never told that the
20 purpose of the biography was actually to conceal the truth
21 about L. Ron Hubbard.

22 Upon reviewing the documents which are now sealed
23 in this Court, defendant Armstrong and Mr. Garrison realized
24 that plaintiff and intervenor had intentionally misrepresented
25 Hubbard to the public and to the courts. At first,
26 defendant Armstrong believed this had only been through
27 innocent mistakes on the parts of members of the Church of
28 Scientology, and he attempted to work within the system to

1 let the truth about Hubbard come out. It became clear to
2 defendant Armstrong and Mr. Garrison, however, that the
3 misrepresentations were intentional, and when they announced
4 their intent to publish a true biography of L. Ron Hubbard,
5 harassment, threats and this lawsuit followed.

6 Mr. Garrison was fortunate as he was able to settle
7 with the Church of Scientology. In exchange for agreeing
8 never to publish the truth about L. Ron Hubbard, and return-
9 ing the documents in his possession, the Church entered into
10 secret settlement with Mr. Garrison.

11 Mr. Armstrong was not so fortunate. Shortly after
12 he informed officials of the Church of Scientology and
13 representatives of Hubbard about the misrepresentations that
14 had previously been made about L. Ron Hubbard, he was ordered
15 to undergo a security check. This process is essentially a
16 form of interrogation where the victim is strapped to an "E-
17 meter," a primitive lie-detector device. The questioning can
18 be brutal, and the purpose of the "sec check" is to intimi-
19 date the person being interrogated so that his thinking will
20 be "corrected". The consequences of failing a sec check can
21 be dire.

22 Apparently, defendant Armstrong did fail the sec
23 check. Only a few months thereafter, he was declared a
24 "suppressive person", which according to Scientology, meant
25 that the Fair Game Doctrine could be applied against him.
26 The Fair Game Doctrine provides that in order to combat an
27 enemy of the Church of Scientology, any tactic may be used
28 including lying to, stealing from and destroying that person.

1 The Fair Game Doctrine, in fact, was used against
2 defendant Armstrong. Evidence will prove that defendant
3 Armstrong was harassed, his family was harassed, lies were
4 spread about him, his personal property was stolen from him,
5 and there were attempts to have his car involved in an auto
6 accident, either to actually kill him, or scare him from
7 continuing to try to reveal the truth about L. Ron Hubbard.

8 The above actions were clearly taken in order to
9 intimidate the defendant from exposing the lies and frauds
10 plaintiff, intervenor and L. Ron Hubbard have perpetrated
11 over 30 years. It shows to what extent the intervenor and
12 the plaintiff will go to conceal evidence of their fraud.
13 This misconduct is also clearly related to the present case,
14 for it demonstrates specifically to what unlawful ends the
15 plaintiff and the intervenor will go to suppress the subject
16 documents and materials under seal, and to intimidate a
17 perceived enemy from exercising his legal rights.

18 Defendant believes that plaintiff and intervenor
19 seek this injunction to further their conspiracy to conceal
20 evidence of the frauds they have committed. Defendant is
21 fearful that most of the incriminating documents concerning
22 Hubbard, as well as those documents defendant and other
23 litigants may need to further their claims against plaintiff
24 and intervenor will be destroyed if this Court grants the
25 injunctive relief requested. Concealing or destroying
26 evidence of coruse, is a violation of California Penal Code,
27 §135. Moreover, destruction of evidence relevant to a
28 federal proceeding, is also considered a violation of federal

1 criminal law under the obstruction of justice statute, 18
2 U.S.C. §1503. See, United States v. Walasek, 527 F.2d 676
3 (3rd Cir. 1975).

4
5 2. THIS COURT MAY ALLOW AN AMENDMENT
6 TO ANY PLEADING ON ANY TERMS WHICH
7 THE COURT, IN ITS DISCRETION, DEEMS
8 TO BE JUST.

9 California Code of Civil Procedure,
10 §473

11
12 Code Section 473 specifically allows the Court to
13 exercise its discretion in considering whether or not to
14 allow a party to amend any pleading. The general policy of
15 the law in this State is to allow great liberality in amend-
16 ment of pleadings prior to trial, and even during trial
17 itself, so as to allow the parties to properly present their
18 causes of action or defenses thus furthering justice by
19 insuring a trial on the true merits of the case. Atchinson,
20 Topeka & Santa Fe Railroad Company v. Superior Oil Company,
21 243 Cal.App.2d 298, 52 Cal.Rptr. 53 (1966); Dunzweiler v.
22 Superior Court, 267 Cal.App.2d 569, 73 Cal.Rptr. 331 (1968).

23 The extent of this liberality is demonstrated by
24 the case of Re-Development Agency of the City of Fresno, Inc.
25 v. Herrold, 86 Cal.App.3d 1024, 150 Cal.Rptr. (1978), wherein
26 the Court held that if a Motion to Amend Pleadings is timely
27 made, and if granting of that Motion will not prejudice the
28 opposing party, it is error to refuse permission to amend,

1 and furthermore, where that refusal to amend also results in
2 the party being deprived of a right to assert a meritorious
3 defense, it is not only error but an abuse of discretion.

4 While the power of this Court to issue an injunc-
5 tion has specifically been authorized by the Legislature in
6 the California Code of Civil Procedure, §§525, et. seq.,
7 nonetheless, it is Hornbook Law that the analysis undertaken
8 by the court in granting such an injunction, as well as the
9 inherent power of the court to grant such an injunction, is
10 equitable in nature. For these reasons, one clear valid
11 defense to an injunction is that defense of unclean hands.
12 Cal.Jur.3d, Injunctions, §17.

13 The unclean hands doctrine can be stated very
14 simply:

15
16 "When a party who at, as actor,
17 seeks to set judicial machinery in
18 motion and obtain some remedy, has
19 violated conscience, good faith and
20 other equitable principles in his
21 prior conduct, the doors of justice
22 will be shut against him in limine;
23 the court will refuse to interfere
24 on his behalf, to acknowledge his
25 right, or to afford him any remedy."
26 Lynn v. Dunkel, 42 Cal.2d 845, 850,
27 299 P.2d 236, 239 (1956); DeGarmo v.

28 ///

1 Goldman, 19 Cal. 2d 755, 123 P.2d 1,
2 6 (1942).

3
4 The basis of this doctrine is to protect the integrity of the
5 court, particularly in equity matters where it acts as a
6 court of good conscience. See, De Garmo, supra; Katz v.
7 Karlsson, 84 Cal.App.2d 469, 191 P.2d 541 (1948). The
8 Supreme Court of California has called this doctrine "fun-
9 damental", De Garmo v. Goldman, supra, and in Katz v.
10 Karlsson, supra, the clean hands doctrine was called "the
11 most important rule affecting the administration of justice."

12 The importance of this doctrine is also reflected
13 in the Appellate Court's frequent admonitions to trial courts
14 to take all possible efforts to see if the doctrine applies.
15 In De Garmo v. Goldman, supra, the Supreme Court of Cali-
16 fornia stated "it is the duty of a court of equity, upon any
17 suggestion that a plaintiff has not acted in good faith
18 concerning the matters upon which he bases his suit, to
19 inquire into the facts in that regard." Similarly,
20 Rosenfield v. Zimmer, 116 Cal.App.2d, 719, 254 P.2d 137 held
21 that "it is the duty of a trial court upon the discovery that
22 the transaction is tainted with fraud or lack of good faith
23 to inquire into the facts in regard thereto. See also, Howe
24 v. Brock, 194 P.2d 762, 765 (1948).

25 In cases such as this one where the plaintiff and
26 intervenor seek to use equitable relief to forward the
27 frauds they have committed, the law makes it plain that
28 equitable relief cannot be granted in assisting a party to a

1 fraudulent scheme to secure the objective of his plan.
2 Rosenfield v. Zimmer, supra. That, of course, is precisely
3 why the plaintiff and intervenor are before this Court. They
4 have perpetrated a massive fraud to misrepresent the back-
5 ground of L. Ron Hubbard, his beliefs and practices, and his
6 control of the Church of Scientology. They have not only
7 made deliberate misrepresentations to the public in order to
8 procure millions of dollars through their fraudulent misrep-
9 resentation about Mr. Hubbard and Scientology, but they have
10 also sought to defraud this and other courts into believing
11 that Mr. Hubbard has virtually no connection with the Church
12 of Scientology. In order to forward this claim, the plain-
13 tiff and intervenor have willfully and deliberately destroyed
14 evidence relevant to federal and state court proceedings and
15 have sought to terrorize individuals such as the defendant
16 who attempted to expose the frauds they had committed.

17 In fact, the misconduct by the intervenor and the
18 plaintiff is so "flagrantly unconscionable" that even if the
19 defendant did not plead the clean hands doctrine as a
20 defense, the court would be compelled to raise it itself.
21 See, Katz v. Karlsson, supra, Sears Roebuck & Co. v. Blade,
22 294 P.2d 140 19 (1956); Vehm v. Fireside Thrift Co., 272
23 Cal.App.2d 15, 76 cal.Rptr. 49 (1969). Katz v. Karlsson is
24 the most famous case where the conduct was found to be so
25 outrageous that the court felt obligated to raise the clean
26 hands doctrine sua sponte. There, the husband who sought an
27 annulment of a divorce which was granted to his wife, either
28 lied to the Court in his affidavit, or had obtained an

1 interlocutory divorce by collusion and concealing evidence
2 from the Court. In either case, the appellate division found
3 that his conduct was so flagrantly unconscionable, that even
4 if the clean hands defense had not been raised at the trial
5 court level, the appeals court had no choice but to reverse
6 the decision to annul his divorce.

7 In this case, of course, the plaintiff's and
8 intervenor's misconduct is a great deal more serious than
9 making misrepresentations to the Court, conduct the Katz
10 court found to be flagrantly unconscionable. Not only have
11 the plaintiff and intervenor lied to this Court and other
12 courts, but they have deliberately concealed evidence,
13 intentionally destroyed evidence, unlawfully attempted to
14 intimidate witnesses, including defendant who testified
15 against them in this case, and have engaged in a massive
16 scheme to defraud thousands of people out of millions of
17 dollars. Plainly, this sort of conduct to grossly violates
18 conscience, good faith and other principles of equity, that
19 this court could not grant equitable relief even if the
20 defendant did not plead the clean hands doctrine.

21 Amendment of the defendant's answer at this time
22 will not prejudice the other parties in this case. Defendant
23 is not adding a new defense at the last hour, but simply
24 reinstating a defense plaintiff and intervenor have been
25 aware of since defendant's original answer was filed. The

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1 amendment at this time, in fact, is a correction of a tech-
2 nical error.

3 The duty of this Court to investigate any sug-
4 gession that a party seeking equitable relief has engaged in
5 bad faith or fraudulent conduct, and the heinous nature of
6 the conduct the plaintiff and the intervenor have engaged in
7 all strongly indicate that this Court should permit the
8 defendant to amend his answer. Add to this the fact that
9 defendant's amendment is really a correction of a technical
10 deficiency and that the parties will not be prejudiced by
11 such an amendment since they have been on notice from the
12 beginning of this case that the defendant intended to raise a
13 clean hands defense.

14
15 3. THE PROPOSED AMENDMENT OF
16 SPOILIATION IS A VIABLE DEFENSE
17 TO PLAINTIFF'S AND INTERVENOR'S
18 ACTIONS.

19
20 In Smith v. Superior Court, 84 Daily Journal D.A.R.
21 469 (January 31, 1984), Phyllis Smith was driving her car
22 southbound on California Avenue in West Covina. Ramsey Sneed
23 was driving a 1979 Ford Van northbound on California Avenue,
24 at approximately the same time and place, when the left rear
25 wheel and tire flew off the van and crashed in the windshield
26 of Phyllis Smith's vehicle. The impact caused pieces of
27 glass to strike her in the eyes and face, resulting in
28 permanent blindness in both eyes and impairment of her sense

1 of smell. Abbott Ford was the dealer that customized the van
2 with "deep dish mag wheels" before it sold the van to Sneed.
3 Immediately after the accident, the van was towed to Abbott
4 Ford for repairs. Abbott Ford agreed with Smith's counsel to
5 maintain certain automotive parts (physical evidence),
6 pending further investigation. Thereafter, Abbott Ford
7 destroyed, lost or transferred said physical evidence, making
8 it impossible for Smith's experts to inspect and test those
9 parts in order to pinpoint the cause of the failure of the
10 wheel assembly on the van. Plaintiffs' second amended
11 complaint contained an eighth cause of action entitled
12 "Tortious Interference with Prospective Civil Action by
13 Spoliation of Evidence" against Abbott Ford. In response to
14 a demurrer to said cause of action, the court sustained the
15 demurrer, without leave to amend. Plaintiff petitioned the
16 Court of Appeal for a writ of mandate, seeking relief from
17 the Court's sustaining of the demurrer without leave to
18 amend. The court, in issuing a writ of mandate, stated:

19
20 While intentional spoliation of
21 evidence has not been recognized as
22 a tort heretofore, we conclude that
23 a prospective civil action in a
24 products liability case is a
25 valuable 'probable expectancy' that
26 the court must protect from the kind
27 of interference alleged herein."

28 * * * *

1 "Public policy dictates that the
2 Smiths' interests in their prospec-
3 tive civil litigation are entitled
4 to legal protection against Abbott
5 Ford's alleged intentional spolia-
6 tion of evidence, even though their
7 damages cannot be stated with cer-
8 tainty."

9 84 Caily Journal D.A.R. at 470
10 (emphasis added).

11
12 In the present case, defendant, Gerald Armstrong,
13 seeks to amend his Answers to the Complaint and Complaint in
14 Intervention to include an affirmative defense based upon the
15 decision in Smith v. Superior Court. Defendant, Armstrong,
16 is not seeking to recover monetary damages from plaintiff or
17 intervenor. Rather, the proposed amendment to the answer
18 merely seeks to preclude plaintiff and intervenor from
19 benefiting from acts or omissions to act which might lead to
20 the loss, destruction or spoliation of the evidentiary value
21 of the subject materials under seal, to the detriment of all
22 parties who seek discovery of said materials. The amendment
23 further seeks to preclude plaintiff and intervenor from
24 obtaining a return of the subject materials by way of equity.

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4. CONCLUSION

Based upon the foregoing, it is respectfully requested that this Court grant defendant, Armstrong, leave to amend his Answers to the Complaint and Complaint in Intervention and that the proposed First Amended Answers which are attached hereto as Exhibits "B" and "C", be deemed filed and served as of the date of the hearing.

DATED: April 2, 1984

CONTOS & BUNCH

BY: 
JULIA DRAGOJEVIC
Attorneys for Defendant,
GERALD ARMSTRONG

JD4:3

Nov. 9 1982

R-25

DEPT. 82

HONORABLE Frances Rothschild

JUDGE

T. Acuna

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

Deputy Sheriff

E SKIAR
None

Reporter

(Parties and counsel checked if present)

C 420 153

Church of Scientology of California, etc.,
VS
Gerald Armatrong, et al.,

Counsel for Plaintiff

/cross-defendant

Lenske, Lenske, Heller & Magasin

Counsel for Defendant

H. STECHEL ✓

J. Dragosevic ✓

NATURE OF PROCEEDINGS.

Motion of plaintiff and cross-defendant, Church of Scientology of California, to strike, defendant, ARMstrong's answer and affirmative, defenses to plaintiff's complaint

(C.C.P. SEC., 453)

(TRANS FROM D-83)

Motion is argued and submitted later

Paragraph # 1 of defendant's affirmative defense is stricken from the answer.

In all other respects motion is denied.

IT IS STIPULATED that Commissioner may hear this matter as Judge Pro Tem.

TRANSFERRED TO/FROM DEPARTMENT

Court disqualifies itself

170.6 CCP affidavit filed

OFF CALENDAR

On court's own motion

No Appearance

At request of moving party

By stipulation

CONTINUED TO

IN DEPT.

AT

AM

PM

On court's own motion

Slip to be filed

On oral/written stipulation.

REQUEST OF

Moving party

Respondent(s)

TRO to remain in full force and effect

TRO dissolved

NOTICE:

Waived

By moving party

By respondent(s)

PETITIONER(S) IS/ARE SWORN AND TESTIFIES/TESTIFY

PETITION IS GRANTED (AS AMENDED)

DECREE IS SIGNED AND FILED.

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82

DEPT.

MINUTES ENTERED
Nov. 9 1982

COUNTY CLERK

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CONTOS & BUNCH
LAWYERS
3855 TOPANGA CANYON BOULEVARD
SUITE 400
WOODLAND HILLS, CALIFORNIA 91367
(213) 716-9400

Attorneys for Defendant, GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA,	)	CASE NO: C 420 153
)	
Plaintiff,	)	FIRST AMENDED ANSWER TO COMPLAINT
)	
vs.	)	(PROPOSED)
)	
GERALD ARMSTRONG,)	
)	
Defendant.)	
)	
MARY SUE HUBBARD,)	
)	
<u>Intervenor.</u>)	

COMES NOW defendant, GERALD ARMSTRONG, for himself and for no other defendant, admits, denies and alleges as follows:

1.

ANSWER TO GENERAL ALLEGATIONS

- (1) Defendant admits paragraph 1.
- (2) Defendant denies that there are or should be any other individuals named as defendants in said action.
- (3) Defendant admits that he was a member of the Church of Scientology and a member of the Sea Organization from February 1971 until December 1980, but denies that the Sea

1 Organization is a "fraternal organization" or that members.
2 of the Sea Organization take "special vows of confidentiality".
3 Defendant states that members of the Church of Scientology in
4 general are often coerced into signing various legal documents,
5 the contents of which they either do not know or are informed
6 that the documents are just "for the government" and that
7 members need not be concerned about them. Defendant states
8 that the "non-disclosure and release bond" commonly utilized
9 by the plaintiff was considered to be unenforceable as a legal
10 document and contrary to public policy. Defendant states that
11 the non-disclosure and release bonds are generally used to
12 conceal criminal and tortious acts, conduct, policies, and
13 "operations" of the plaintiff which are designed to perpetrate
14 such acts.

15 (4) Defendant denies that he was a staff member
16 of the plaintiff and denies the remaining allegations of
17 par. 4. Defendant's position and membership in the Church of
18 Scientology is more specifically set forth in the Cross-Complaint
19 made a part hereof.

20 (5) Defendant denies that the plaintiff is a not-
21 for-profit corporation, admits that it is organized under the
22 laws of the state of California, denies that it is a religious
23 organization and admits that it has a principal place of business
24 in Los Angeles, California.

25 (6) Defendant admits that he was responsible and
26 appointed by L. Ron Hubbard to a project involving the collection
27 and maintenance of information and materials about Hubbard
28 and his commencement of Scientology. Defendants denies that

1 that Scientology is a religion, but rather claims that it
2 is a criminal conspiracy fraudulently started by Hubbard
3 that has engaged in a continuous pattern of criminal,
4 fraudulent and tortious operations, practices and policies
5 since its inception right up to the present date. Defendant
6 denies that he was an agent of the plaintiff but rather as
7 a party to a contract with Hubbard. Defendant states
8 that Hubbard had absolute control of all plaintiff's accounts,
9 that plaintiff acted as the agent of Hubbard and that any and
10 all of his activities were not conducted for the plaintiff
11 but rather for Hubbard. Defendant denies that any and all
12 materials collected or maintained by him in said project are
13 the personal property of plaintiff, but rather states that said
14 materials constitute his property or the property of Omar V.
15 Garrison. Defendant further states that the materials and
16 documents collected by him in said project in many respects
17 reveal a consistent pattern of fraud perpetrated by Hubbard
18 through his agent, the plaintiff, upon members of the Church
19 of Scientology and the public at large. Defendant asserts that
20 the membership of the Church of Scientology and the general
21 public have an interest in said materials and documents in
22 order to reveal the falsity of numerous representations uni-
23 formly made in writing by Hubbard and the plaintiff.

24 (7) Defendant admits that the purpose of
25 gathering and collecting the materials in his contract with
26 Hubbard was for the purpose of providing those materials to
27 Omar V. Garrison to write a biography of Hubbard. Defendant
28 asserts that when he learned the contents of

1 numerous materials they realized that Hubbard's background,
2 qualifications, credentials and claims as represented by
3 him and the plaintiff as his agent in writing have been
4 uniformly misrepresented and constitute a fraud on the public
5 at large which is purchasing plaintiff's publications and
6 also upon Church membership.
7

II.

ANSWER TO FIRST CAUSE OF ACTION

10 (8) Defendant repeats and repleads each and every
11 answer contained in answer 1 through 7 above and incorporates
12 the same herein as though fully set forth herein.

13 (9) Defendant denies the allegations in par. 9 and
14 claims that any materials in his possession were and are properly
15 in his possession and constitutes the property of him or Omar
16 Garrison, but that the plaintiff is "a public figure" and that
17 the information contained in any materials and documents in
18 his possession should be properly known to the public.

19 (10) Defendant denies that the property recited in
20 the Complaint has any value apart from the value of the infor-
21 mation contained in the documents. Defendant states that the
22 value of the information contained in the documents is incalculable
23 because if said information was made known to the public at
24 large and/or the membership of the Church of Scientology it
25 would uniformly refute almost all of the claims made about
26 Hubbard, his background, qualifications, credentials and purposes
27 in beginning the Church of Scientology.

28 ////

1 (11) Defendant denies that he wrongfully converted
2 any property but claims that said property was and is properly
3 in his possession and/or the possession of Omar V. Garrison.
4 Defendant further states that the xerography and use of any
5 photographic paper or chemicals was for Hubbard and not for
6 the plaintiff and that said xerography and photographic paper
7 and chemicals were properly utilized by him.

8 (12) Defendant denies that plaintiff has made any
9 proper written demand for said documents or materials, on the
10 grounds that said materials and documents do not belong to the
11 plaintiff but rather to the defendant and/or Omar Garrison.
12 Defendant also denies that there was any wrongful taking
13 and conversion of any property by defendant.

14 (13) Defendant denies that there has been any con-
15 version of any property or that any property in his possession
16 belongs to the plaintiff and therefore denies that the plaintiff
17 has incurred any damage in connection with any effort to regain
18 said property.

19 (14) Defendant denies that any of his acts were in-
20 tentional, deliberate, willful, wanton, malicious, oppressive,
21 or were committed with intent to defraud plaintiff or in disregard
22 of the rights of the plaintiff. Defendant denies that plaintiff
23 is entitled to recover any damages, but rather asserts that he
24 is entitled to recover damages as more fully set forth in his
25 Cross-Complaint filed herewith.

26 ////

27 ////

28 ////

SECOND CAUSE OF ACTION

1
2
3 (15) Defendant repeats and replcads each and every
4 answer contained in paragraphs 1 through 7 above and incorporates
5 them herein as though fully set forth herein.

6 (16) Defendant denies that he became a fiduciary
7 to the plaintiff regarding any materials or documents under his
8 custody or control or that he assumed any legal duty to the
9 plaintiff except a legal duty in contract with Hubbard to
10 write his biography with Garrison with whom defencant had an
11 agreement as research assistant to provide documents and other
12 relevant materials for the biography project.

13
14 (17) Defendant denies that there is any conflict of
15 interest between him and the plaintiff and/or the Ralston Pilot
16 Publishing Company in violation of any fiduciary duty.

17 (18) Defendant denies the enforceability or validity
18 of Exhibit B to the Complaint. Defendant states that the non-
19 disclosure and confidentiality bonds referred to are in violation
20 of public policy, constitute a fraud on the general public and
21 Church membership, and have been adjudicated to be unenforceable
22 in the case of Church of Scientology v. La Venda Van Schaick, et al
23 Clark County, Nevada, Civil No. A196800. Defendant further
24 states that any and all information contained in the documents
25 and materials which he collected on behalf of Hubbard for Omar
26 V. Garrison contain information about a "public figure", do
27 not constitute trade secrets, reveal evidence of a sustained
28 pattern of criminal fraud and misrepresentation, and that it is

1 in violation of public policy to coerce the execution of
2 non-disclosure and confidentiality bonds in said circumstances.
3 Defendant denies that he has intentionally and without legal
4 excuse breached any duty of confidentiality.

5 (19) Defendant denies that he has made any unauthorized
6 disclosure of any confidential information, or that he has
7 caused injury to any reputation or diminution in value of any
8 materials. Defendant asserts that the referenced biography
9 of Hubbard cannot be written with the uniform misrepresentations
10 and fraudulent policies and practices exercised by the plaintiff
11 because the information contained in the documents which he
12 collected reveal said misrepresentation and fraud. Defendant
13 further alleges that the truth of the matter contained in said
14 materials is a defense to any claims for damages based upon
15 defamation. Defendant further states that public policy for-
16 bids the concealment of the information contained in said docu-
17 ments and materials and encourages the dissemination and dis-
18 closure of said information.

19 (20) Defendant denies that plaintiff is or can make
20 any demand to cease unauthorized disclosures of confidential
21 information, or that the information is confidential or that
22 he can be prevented from making said disclosures in the form
23 of affidavits to appropriate courts for the purpose of criminal
24 and civil litigation.

25 (21) Defendant denies that any unauthorized disclosures
26 of confidential information have caused any damages to the
27 plaintiff, or that the plaintiff has standing to assert any
28 such damages, or that an authorized biography of Hubbard can

1 be written by the plaintiff which is not false and fraudulent,
2 unless the plaintiff admits the truth of the information con-
3 tained in the documents and materials which he collected.

4 (22) Defendant denies that any of his acts were
5 intentional, deliberate, willful, wanton, malicious or oppressive
6 and committed with intent to defraud the plaintiff or in reckless
7 disregard of plaintiff's rights and denies that plaintiff is
8 entitled to any damages, but rather claims damages as set forth
9 in the Cross-Complaint herein.

10
11 IV.

12 THIRD CAUSE OF ACTION

13 (23) Defendant repeats and replcads each and every
14 answer contained in paragraphs 1 through 7 and 15 through 22
15 above and incorporates them by reference as though fully set
16 forth herein.

17 (24) Defendant denies that he has converted any pro-
18 perty of the plaintiff in breach of any fiduciary duty or that
19 he will be unjustly enriched at plaintiff's expense. Defendant
20 denies that a constructive trust should be impressed upon said
21 property or that he should be named as trustee on behalf of
22 the plaintiff. Defendant claims that any attempt to prevent
23 the disclosure of any of the information in said documents and
24 materials will be a prior restraint on freedom of speech and
25 expression in violation of the First Amendment to the United
26 States Constitution. Defendant further states that any infor-
27 mation in said documents is information about a public figure
28 and said information should be made available to the general

1 public and to the membership of the Church of Scientology.
2

3 IV.

4 ANSWER TO REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF

5 (25) Defendant repeats and repleads each and every
6 answer contained in paragraphs 1 through 7 and 15 through 22
7 above and incorporates them herein as though fully set forth
8 herein.

9 (26) Defendant admits that there is a controversy
10 between plaintiff and defendant because plaintiff has brought
11 the subject action. Defendant denies the subject action was
12 properly brought but that it is merely intended to be harassive
13 and vexatious, and defendant denies that he owes any duty of
14 fiduciary or other nature to the plaintiff.

15 (27) Defendant admits that a judicial determination
16 of the respective rights and duties of the parties must now
17 be made because the suit has been harassively and vexatiously
18 brought by the plaintiff, but defendant denies that he owes
19 any duties and obligations to the plaintiff but rather the
20 plaintiff is responsible for fraudulent misrepresentation and
21 other torts more fully set forth in the Cross-Complaint filed
22 herewith. Defendant denies that a constructive trust should
23 be imposed upon said property.

24 (28) Defendant admits that a judicial declaration is
25 now necessary in the subject action.

26 (29) Defendant denies that this Court should prelimi-
27 narily or permanently enjoin the defendant from unauthorized
28 dissemination of any information contained in said documents

1 on the grounds that the information is not confidential,
2 that it is in violation of public policy to conceal it, that
3 plaintiff has no standing in which to bring the subject action,
4 and that information, unless it is in the form of a trade
5 secret, is not protected under the law.

VII.

ANSWER TO PRAYER FOR RELIEF

8
9 Defendant answers as follows to the plaintiff's prayers:

10 (1) Defendant denies that general and special
11 damages as to the first cause of action should be awarded to
12 the plaintiff.

13 (2) Defendant denies that the Court should order the
14 return of any property to the plaintiff based on the first cause
15 of action.

16 (3) Defendant denies that general and special damages
17 should be accorded to the plaintiff on the second cause of
18 action.

19 (4) Defendant denies that this Court should issue
20 either a temporary restraining order or a preliminary or per-
21 manent injunction prohibiting him from disseminating any in-
22 formation about the plaintiff, and that any such order would
23 be in violation of his right to freedom of speech and expression
24 under the United States Constitution, Amendment 1.

25 (5) Defendant denies that punitive and exemplary
26 damages in the amount of \$50,000.00 should be awarded per
27 cause of action.

28 (6) Defendant denies that a constructive trust should

1 be impressed upon any property in the possession of the
2 defendant.

3 (7) Defendant denies that any materials in the
4 project referred to can be disseminated, copied or made avail-
5 able to the public only with the express authorization of the
6 Church of Scientology of California.

7 (8) Defendant denies that reasonable attorneys'
8 fees or costs should be awarded in such action, except as set
9 forth in defendant's Cross-Complaint.

10
11 VIII.

12 AFFIRMATIVE DEFENSES

13 (1) And further answer the Complaint/Complaint-in-
14 Intervention, defendant states that plaintiff and intervenor
15 should be barred from seeking equitable relief by way of in-
16 junction in that plaintiff and intervenor come before this Court
17 with unclean hands. Plaintiff and intervenor seek by way of
18 injunction to suppress/destroy evidence of frauds in that the
19 documents and materials presently under seal in this case
20 evidence numerous frauds regarding the alleged background and
21 accomplishments of L. Ron Hubbard, founder of Dianetics and
22 Scientology, frauds which have been perpetrated upon defendant
23 and thousands of Scientology followers and the public.

24 (2) And further answering the Complaint/Complaint-in-
25 Intervention, defendant states that plaintiff and intervenor
26 should be barred from seeking equitable relief or any recovery
27 herein in that plaintiff and intervenor were involved in the
28 destruction by shredding of documents, which documents defendant

1 saved from destruction and preserved. Defendant fears that should
2 the documents and materials presently under seal be returned to
3 plaintiff and/or intervenor pursuant to injunction, that
4 spoliation would again result. Said documents and materials
5 are highly relevant evidence to defendant's Cross-Complaint in
6 this case and all the Scientology litigation.

7 (3) And further answering the Complaint, defendant
8 states that the plaintiff's action is barred by the doctrine
9 of laches. Hubbard has been in possession of most of the
10 information contained in the documents for the past 30 years.
11 The documents and materials collected have been in the possession
12 of Omar Garrison for a period covering at least from 1980 to
13 early 1982. Plaintiff's failure to prohibit the dissemination
14 of the documents and information to Garrison, a third party,
15 not a member of the plaintiff Church, bars any and all equitable
16 relief to prevent the dissemination of documents to other third
17 parties or to recover damages for said dissemination.

18 (4) And further answering, defendant states that the
19 plaintiff does not have standing to bring the present action. The
20 documents and materials only have value in so far as they contain
21 information about L. Ron Hubbard, a public figure. The infor-
22 mation contained in said documents could only be barred from
23 dissemination if it constituted trade secrets, was defamatory,
24 or violated a right of privacy of L. Ron Hubbard. Since Hubbard
25 has not asserted any claim to said materials on the violation
26 of either his rights of privacy, or the unlawful dissemination
27 of trade secrets or defamatory information, plaintiff has no
28 standing to assert said claim on his behalf.


1 (5) And further answering, defendant states that
 2 plaintiff cannot be entitled to damages or injunctive relief as
 3 a matter of law unless the documents and materials collected
 4 by defendant and the information contained therein have been
 5 disseminated in violation of rights of privacy of L. Ron Hubbard,
 6 constitute false and defamatory statements, or constitute trade
 7 secrets.

8 (6) And further answering, defendant states that it is
 9 against public policy and in violation of defendant's rights
 10 under the First Amendment to the U.S. Constitution to prevent
 11 him from disclosing or disseminating the information contained
 12 in the subject documents and materials, or the documents and
 13 materials themselves.

14 WHEREFORE, defendant prays that plaintiff take nothing
 15 and that defendant be given judgment against plaintiff for his
 16 costs incurred herein and for such other and further relief as
 17 may seem just and proper.

18
 19 DATED: March 16, 1984.

20
 21 CONTOS & BUNCH

22
 23 By: 
 24 JULIA DRAGOJEVIC
 25 Attorneys for Defendant
 26 GERALD ARMSTRONG
 27
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(213) 716-9400

Attorneys for Defendant GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA,	)	CASE NO. C 420 153
)	
Plaintiff,	)	FIRST AMENDED ANSWER TO
	)	AMENDED COMPLAINT IN
vs.	)	INTERVENTION
)	
GERALD ARMSTRONG, et al.)	
)	
Defendants,)	
)	
MARY SUE HUBBARD,)	
)	
<u>Intervenor.</u>)	

Defendant, GERALD ARMSTRONG, for himself alone, answers the unverified Amended Complaint-In Intervention on file herein as follows:

1. Denies each and every allegation of each cause of action thereof.
2. Denies plaintiff-in-intervention was damaged in any sum alleged, or any other sum.

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FIRST AFFIRMATIVE DEFENSE

3. Alleges that plaintiff-in-intervention's alleged cause of action, each, do not state facts sufficient to constitute a cause of action against said defendant.

SECOND AFFIRMATIVE DEFENSE

4. Alleges that plaintiff-in-intervention's damages, if any, were caused and contributed to by plaintiff-in-intervention's own negligence.

THIRD AFFIRMATIVE DEFENSE

5. Alleges that plaintiff and intervenor should be barred from seeking equitable relief by way of injunction in that plaintiff and intervenor come before this Court with unclean hands. Plaintiff and intervenor seek by way of injunction to suppress/destroy evidence of frauds in that the documents and materials presently under seal in this case evidence numerous frauds regarding the alleged background and accomplishments of L. Ron Hubbard, founder of Dianetics and Scientology, frauds which have been perpetrated upon defendant and thousands of Scientology followers and the public.

FOURTH AFFIRMATIVE DEFENSE

6. Alleges that plaintiff and intervenor should be

1 barred from seeking equitable relief or any recovery herein in
2 that plaintiff and intervenor were involved in the destruction
3 by shredding of documents, which documents defendant saved from
4 destruction and preserved. Defendant fears that should the
5 documents and materials presently under seal be returned to
6 plaintiff and/or intervenor pursuant to injunction, that
7 spoliation would again result. Said documents and materials are
8 highly relevant evidence to defendant's Cross-Complaint in this
9 case and all the Scientology litigation.

10
11 FIFTH AFFIRMATIVE DEFENSE
12

13 7. Alleges that the plaintiff-in-intervention's action
14 is barred by the doctrine of laches. L. Ron Hubbard has been in
15 possession of most of the information contained in the documents
16 for the past 30 years. The documents and materials collected
17 have been in the possession of Omar Garrison for a period covering
18 at least from 1980 to early 1982 and were in the rightful posses-
19 sion and custody of defendant. Plaintiff-in-intervention's
20 failure to prohibit the dissemination of the documents and infor-
21 mation to Garrison, a third party, not a member of the plaintiff
22 CHURCH OF SCIENTOLOGY OF CALIFORNIA, bars any and all equitable
23 relief to prevent the dissemination of documents to other third
24 parties or to recover damages for said dissemination.

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SIXTH AFFIRMATIVE DEFENSE

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3 8. Alleges that the plaintiff-in-intervention does not
4 have standing to bring the present action. The documents and
5 materials only have value insofar as they contain information
6 about L. Ron Hubbard, a public figure. The information contained
7 in said documents could only be barred from dissemination if it
8 constituted trade secrets, was defamatory, or violated a right of
9 privacy of L. Ron Hubbard. Since L. Ron Hubbard has not asserted
10 any claim to said materials on the violation of either his rights
11 of privacy, or the unlawful dissemination of trade secrets or
12 defamatory information, plaintiff-in-intervention has no standing
13 to assert said claim on his behalf.

SEVENTH AFFIRMATIVE DEFENSE

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17 9. Alleges that plaintiff-in-intervention cannot be
18 entitled to damages or injunctive relief as a matter of law
19 unless the documents and materials collected by defendant and
20 the information contained therein have been disseminated in
21 violation of rights of privacy of L. Ron Hubbard, constitute
22 false and defamatory statements, or constitute trade secrets.

EIGHTH AFFIRMATIVE DEFENSE

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26 10. Alleges that it is against public policy and in
27 violation of defendant's rights under the First Amendment to
28 the U.S. Constitution to prevent him from disclosing or

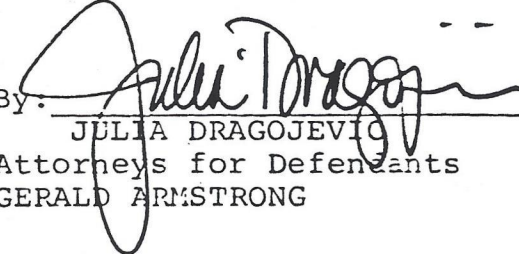
1 disseminating the information contained in the subject documents
2 and materials, or the documents and materials themselves.

3 WHEREFORE, defendant asks judgment as follows:

- 4 1. That plaintiff-in-intervention take nothing;
5 2. For costs of suit; and
6 3. For other proper relief.

7
8 DATED: March 16, 1984.

9
10 CONTOS & BUNCH

11
12 BY: 
13 JULIA DRAGOJEVIC
14 Attorneys for Defendants
15 GERALD ARMSTRONG

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STATE OF CALIFORNIA)
)
 COUNTY OF LOS ANGELES)

I am employed in the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 5855 Topanga Canyon Boulevard, Suite 400, Woodland Hills, California 91367.

On April 2, 1984, I served the within
NOTICE OF MOTION FOR LEAVE TO AMEND ANSWERS; DECLARATION OF
JULIA DRAGOJEVIC; MEMORANDUM OF POINTS AND AUTHORITIES; FIRST
AMENDED ANSWERS OF DEFENDANT [Proposed]

on the parties in said action, by placing a true copy thereof enclosed with postage thereon fully prepaid, in the United States mail at Woodland Hills, California, addressed as follows:

Barrett S. Litt, Esq.
 LITT & STORMER
 Paramount Plaza
 3500 Wilshire Boulevard
 Suite 1200
 Los Angeles, CA 90010

John G. Peterson, Esq.
 PETERSON & BRYNAN
 8530 Wilshire Boulevard
 Suite 407
 Beverly Hills, CA 90211

Howard J. Stechel, Esq.
 6255 Sunset Boulevard
 Suite 2000
 Los Angeles, CA 90028

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 2, 1984, at Woodland Hills, California.

Susan L. Tomsick
 Susan L. Tomsick

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing _____ and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner _____ a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on _____, 19____, at _____ California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Type or Print Name

Signature

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT
(other than summons and complaint)

Received copy of document described as _____

on _____ 19____.

Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of LOS ANGELES, State of California.

I am over the age of 18 and not a party to the within action; my business address is: 5855 Topanga Canyon Blvd., Ste. 400, Woodland Hills CA 91367

On Jan. 27 1986, I served the foregoing document described as _____

RESPONDENT'S APPENDIX

IN LIEU OF CLERK'S TRANSCRIPT

_____ on the parties

in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

see attached list

(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Woodland Hills, California.

Executed on January 27 1986, at Woodland Hills, California.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.

Executed on _____, 19____, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

PAMELA J. RUCKER

Type or Print Name

Pamela J. Rucker

Signature

Eric M. Lieberman
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.
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Counsel for Appellant, Church of Scientology
of California